

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

DECISION

Case #: FOO - 175371

PRELIMINARY RECITALS

Pursuant to a petition filed on July 6, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding FoodShare benefits (FS), a hearing was held on August 9, 2016, in Milwaukee, Wisconsin. The record was held open for 10 days to allow petitioner to provide his pay stubs.

The issue for determination is whether the respondent correctly determined petitioner's FS allotment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services 1 West Wilson Street, Room 651 Madison, WI 53703

By:

Milwaukee Enrollment Services 1220 W Vliet St Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Peter McCombs (telephonically)
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # is a resident of Milwaukee County, who is a recipient of FS.

- 2. Petitioner was due to renew his FS on or before May 31, 2016. On June 6, 2016, the respondent requested income verification, which was received on July 6, 2016.
- 3. On July 7, 0216, the respondent sent petitioner notice that his FS would be reduced because his wife was removed from the FS household due to her immigration status and because his budgeted income had increased.

DISCUSSION

To be eligible for FS, a person must be a U.S. citizen, a qualifying alien, or a member of certain specified classes of immigrants or refugees, none of which apply in this case. 7 C.F.R. §273.4(a). An alien lawfully admitted for permanent residence is not eligible for FS for five years from the date of lawful admittance for permanent residence. 7 C.F.R. §274.4(a)(6)(iii). The requirements for eligibility for immigrants also are set out in the <u>FS Handbook</u>, Appendix 3.12.1.1, Chart 1. To be eligible for FS a person must reside in this country as a "qualified alien" for five years, and a "qualified alien" is specifically defined as a person lawfully admitted for permanent residence.

Visitors to this country are not eligible for FS. <u>Handbook</u>, App. 3.12.1.7. Because petitioner's wife was undocumented, the respondent removed her from petitioner's FS case.

While the notice stated that petitioner's household was eligible for fewer benefits due to fewer eligible household members, income, another factor involved petitioner's income, which has higher than had been previously budgeted. The petitioner does not dispute the income calculation, and I have reviewed petitioner's paystubs and have found no error. I must conclude that the FS reduction due to changes in budgeted income and household size was correct.

CONCLUSIONS OF LAW

- 1. Petitioner's wife is ineligible for FS because she is not a citizen of the US, nor is she a qualifying alien.
- 2. Petitioner's household income increased, which resulted in a reduction in FS eligibility.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received** within 20 days after the date of this decision. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison, Wisconsin, this 6th day of September, 2016

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Peter McCombs Administrative Law Judge Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator Suite 201 5005 University Avenue Madison, WI 53705-5400 Telephone: (608) 266-3096 FAX: (608) 264-9885 email: DHAmail@wisconsin.gov Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on September 6, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability